

Message Text

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R 142211Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY BONN

INFO AMEMBASSY MOSCOW

C O N F I D E N T I A L STATE 007969

E.O. 11652: GDS

TAGS: PARM, GW

SUBJECT: NPT RATIFICATION PROCEEDINGS IN FRG

1. ON DEC. 13, CDU BUNDESTAG MEMBER MERTES GAVE TO ACTING SECRETARY RUSH, ON A PRIVATE BASIS, THE FOLLOWING DRAFT OF A STATEMENT WHICH HE SAID THE CDU WOULD ATTEMPT TO INTRODUCE INTO THE NPT RATIFICATION DEBATE, WITH A VIEW TO MAKING IT PART OF THE RATIFICATION PROCESS. THE PLAN WOULD BE FOR NOTIFICATION OF THE STATEMENT TO BE MADE (A) PRIOR TO RATIFICATION, TO ALL STATES WITH WHICH THE FRG HAS DIPLOMATIC OR OFFICIAL RELATIONS; AND (B) "PRIOR TO THE EXCHANGE OF THE INSTRUMENTS (OF RATIFICA-
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TION) AND SUBJECT TO RATIFICATION, TO THE THREE

DEPOSITARY POWERS, THE USA, THE UK AND THE USSR."
ACKNOWLEDGEMENT OF RECEIPT OF THE NOTIFICATION DOCUMENT
WOULD BE REQUIRED. IN THAT CONNECTION, AGREEMENT WITH
THE CONTENTS OF THE NOTIFICATION DOCUMENT WOULD NOT BE
NECESSARY, "BUT OBJECTION WOULD BE AN OBSTACLE TO ENTRY
INTO FORCE."

2. THE DRAFT STATEMENT READS AS FOLLOWS: "IN CONNECTION
WITH THE VOTE ON GERMANY'S ACCESSION TO THE TREATY ON THE
NON-PROLIFERATION OF NUCLEAR WEAPONS, THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF GERMANY MAKES THE FOLLOWING
STATEMENT:

(1) THE FEDERAL REPUBLIC OF GERMANY SHARES THE
UNITED STATES INTERPRETATIONS ON QUESTIONS OF SECURITY;

(2) NO STAGE IN THE DEVELOPMENT INTO A UNION OF
WESTERN EUROPEAN STATES AND THEIR FULL FREEDOM OF ACTION
IN FOREIGN AND DEFENSE POLICY, AS DESCRIBED BY THE
AMERICAN INTERPRETATION OF EUROPEAN UNIFICATION, IS
DIRECTLY OR INDIRECTLY BARRED BY THE TREATY;

(3) "CONTROL" WITHIN THE MEANING OF ARTICLES I AND II
OF THE TREATY SHALL MEAN, "RIGHT OR CAPABILITY TO FIRE
NUCLEAR WEAPONS WITHOUT THE SIMULTANEOUS DECISION OF AN
EXISTING NUCLEAR-WEAPON STATE";

(4) NO NON-MEMBER OF THE ATLANTIC ALLIANCE WILL
THROUGH THE TREATY OBTAIN A VOICE, DIRECTLY OR INDIRECTLY,
IN QUESTIONS ARISING FROM THE RIGHT OF SELF-DEFENSE, OF
MEMBERS OF THE ALLIANCE, EMBODIED IN ARTICLE 51 OF THE
UNITED NATIONS CHARTER;

(5) NO NON-MEMBER OF THE EUROPEAN COMMUNITY WILL
THROUGH THE TREATY OBTAIN A VOICE, DIRECTLY OR INDIRECTLY,
IN QUESTIONS RELATING TO THE PROGRESSIVE POLITICAL AND
DEFENSE-POLICY UNIFICATION OF EUROPE;

(6) THE TREATY DOES NOT DEROGATE FROM THE GUIDING
IMPORTANCE OF THE PRINCIPLE OF THE SOVEREIGN EQUALITY OF
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ALL MEMBER STATES EMBODIED IN THE UNITED NATIONS CHARTER.
THIS PRINCIPLE ALSO APPLIES TO DIFFERENCES IN THE INTER-
PRETATION OF THE TREATY.

(7) THE CONDITION ON WHICH THE GERMAN BUNDESTAG AND
THE BUNDESRAT CONSENT TO THE TREATY CORRESPOND TO THE
FOREGOING CLARIFICATIONS AND, MUTATIS MUTANDIS, TO THE
CONDIIIONS ON WHICH THE FEDERAL GOVERNMENT SIGNED THE

TREATY ON NOVEMBER 28, 1969, REFERRING TO ITS NOTE AND STATEMENT OF THE SAME DAY."

3- AS SECRETARY RUSH INDICATED TO MERTES UPON RECEIPT OF STATEMENT, WE DO NOT WISH TO BECOME INVOLVED IN DOMESTIC GERMAN DEBATE ON NPT. FOR THIS REASON, WE ARE NOT GOING TO COMMENT IN DETAIL TO MERTES ON HIS DRAFT STATEMENT. HOWEVER, WE DO NOT WISH TO APPEAR TO ACQUIESCE IN STATEMENT BY REMAINING SILENT. THEREFORE, EMBASSY REQUESTED TO TELL MERTES THAT WE HAVE SERIOUS DIFFICULTIES WITH THE STATEMENT AND WITH THE PROPOSED PROCEDURE FOR HANDLING IT.

EMBASSY MAY INFORM HIM THAT WE PLAN MAKE OUR VIEWS KNOWN IN DETAIL TO FOREIGN OFFICE IF DRAFT STATEMENT IS INTRODUCED IN BUNDESTAG.

4. FOR EMBASSY INFORMATION: US WOULD HAVE FOLLOWING PROBLEMS WITH MERTES DRAFT:

(A) THE INCLUSION IN PARAGRAPH (3) OF THE DEFINITION OF "CONTROL". THIS DEFINITION WAS TRIED OUT EARLY IN THE NEGOTIATION OF THE TREATY BUT INTENTIONALLY DROPPED. THE REASONS FOR DROPPING IT -- A COMBINATION OF NON-NEGOTIABILITY AND RELUCTANCE TO GIVE THE SOVIETS A BASIS FOR INQUIRING INTO OUR BILATERAL NATO ARRANGEMENTS INVOLVING TACTICAL NUCLEAR WEAPONS -- STILL SEEM CONTROLLING TODAY. AFTER THIS DEFINITION WAS DROPPED, THE CURRENT TEXT OF ARTICLES I AND II OF THE TREATY WAS DEVISED AND WORKED OUT IN CONSULTATION WITH OUR NATO ALLIES. IN THESE CIRCUMSTANCES, THE RESURRECTION OF THIS DEFINITION WOULD PRACTICALLY REQUIRE THE SOVIETS TO OBJECT, AND THUS COULD JEOPARDIZE THE GERMAN RATIFICATION.

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CATION PROCESS WITHOUT YIELDING ANY PERCEPTIBLE BENEFIT TO THE FRG OR ITS ALLIES. THE LEGITIMATE NATO INTERESTS CONCERNING THE PRESENT ARRANGEMENTS WITH RESPECT TO TACTICAL NUCLEAR WEAPONS APPEAR ADEQUATELY PROTECTED BY THE ESTABLISHED INTERPRETATIONS, WHICH MAKE IT CLEAR THAT THE TREATY DOES NOT APPLY TO NUCLEAR DELIVERY SYSTEMS AND DOES NOT APPLY WHEN A DECISION HAS BEEN MADE TO GO TO WAR.

(B) THE REFERENCES TO THE "AMERICAN INTERPRETATION": THE STATEMENTS MADE PUBLIC AT THE TIME OF OUR SENATE HEARINGS ON RATIFICATION OF THE NPT WERE NOT IN ANY SENSE MERELY US STATEMENTS OF INTERPRETATION. IN FACT THE TITLE USED, "QUESTIONS ON THE DRAFT NPT ASKED BY US ALLIES TOGETHER WITH ANSWERS GIVEN BY THE US" IS

WHOLLY DESCRIPTIVE, AS THESE QUESTIONS AND ANSWERS WERE PAINSTAKINGLY NEGOTIATED IN A SERIES OF NAC MEETINGS HELD DURING THE SPRING OF 1967 AND AGREEMENT TO THEM IN NAC WAS A PRECONDITION OF THE US TABLING OF THE FIRST COMPLETE DRAFT TREATY (MINUS THE SAFEGUARDS ARTICLE) IN THE SUMMER OF 1967. AS AGREED WITH NAC (AND WITH THE SPECIFIC CONCURRENCE OF THE FRG), WHEN WE PRESENTED THESE QUESTIONS AND ANSWERS TO THE SOVIETS WE INDICATED THAT WE PROPOSED TO MAKE THEM PUBLIC AT THE TIME OF SENATE CONSIDERATION OF THE NPT AND THAT ALTHOUGH WE DID NOT EXPECT ANY FORMAL STATEMENT OF APPROVAL BY THE SOVIETS WE INDICATED THAT IF THEY FORMALLY EXPRESSED DISAPPROVAL THEY WOULD TAKE THE RESPONSIBILITY FOR THE FAILURE OF THE TREATY. THIS POINT WAS EXPRESSLY MADE

BY ADMINISTRATION WITNESSES AT SECOND HEARINGS ON THE NPT HELD IN THE WINTER OF 1969. WE BELIEVED THEN AND BELIEVE NOW THAT THESE QUESTIONS AND ANSWERS, WHICH WERE NATO INTERPRETATIONS RATHER THAN MERELY US INTERPRETATIONS, ARE THE MOST THE TRAFFIC WILL BEAR.

(C) PARAGRAPH (6): THE APPLICATION OF THE PRINCIPLE OF SOVEREIGN EQUALITY TO DIFFERENCES IN THE INTERPRETATION OF THE TREATY WE FIND PARTICULARLY TROUBLESOME, IN VIEW OF THE DAMAGE IT COULD DO TO TREATIES GENERALLY.

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(D) PARAGRAPH (2): WHILE IT CONTAINS THE QUALIFYING CLAUSE "AS DESCRIBED BY THE AMERICAN INTERPRETATIONS", IT APPEARS TO GO FAR BEYOND, AND RAISES SERIOUS QUESTIONS OF CONSISTENCY WITH THE INTERPRETATION REFERRED TO, WHICH, AS INDICATED ABOVE, WE BELIEVE TO BE ALL THE TRAFFIC WILL BEAR. THE INTERPRETATION REFERRED TO RESERVED THE AUTHORITY OF ANY FEDERATED STATE TO SUCCEED TO THE NUCLEAR STATUS OF ITS FORMER COMPONENTS ONLY IF SUCH A NEW FEDERATED STATE HAD CONTROL OVER ALL OF ITS EXTERNAL SECURITY FUNCTIONS INCLUDING DEFENSE AND FOREIGN POLICY MATTERS RELATED TO EXTERNAL SECURITY. (IT WOULD NOT HAVE TO BE SO CENTRALIZED AS TO ASSUME ALL GOVERNMENTAL FUNCTIONS.) BARRING SUCH A NEW FEDERATED STATE, THE ANSWER WORKED OUT WITH NATO MADE IT CLEAR THAT THE TREATY WOULD BAR TRANSFER OF NUCLEAR WEAPONS (INCLUDING OWNERSHIP) OR CONTROL OF THEM TO ANY RECIPIENT, INCLUDING A MULTILATERAL ENTITY.

(E) THE FORMAL PROCEDURE PROPOSED FOR HANDLING THE CDU STATEMENT: THIS PROCEDURE IS A TYPE WHICH INVITES, IN FACT ALMOST NECESSITATES, SOME FORM OF COMMENT BY THE SOVIETS. AS NOTED ABOVE, SUCH A PROCEDURE WAS CON-

SIDERED AND REJECTED IN CONSULTATION WITH NATO WHEN THE DECISION WAS MADE TO ADVISE THE SOVIETS THAT CERTAIN STATEMENTS WERE GOING TO BE MADE AS PART OF THE DOMESTIC PROCESS -- I.E., SENATE PROCEEDINGS ON RATIFICATION -- THEREBY DECREASING THE PRESSURE ON THE SOVIETS TO COMMENT, BUT LEAVING NO DOUBT AS TO THE TERMS ON WHICH THE TREATY WAS BEING ACCEPTED BY NATO ALLIES. THERE APPEARS TO BE NO REASON TO FOLLOW A MORE PROVOCATIVE PROCEDURE NOW, WHICH COULD PUT PRESSURE ON THE SOVIETS TO MAKE SOME FORM OF ADVERSE COMMENT.

5. WE WOULD BE INTERESTED IN RECEIVING THE EMBASSY'S COMMENTS ON THE MERTES DRAFT STATEMENT, COMMENTS ON ITS CONTENTS, AND ON THE BEST METHOD OF HELPING TO MINIMIZE THE JEOPARDY TO THE GERMAN NPT RATIFICATION WHICH THE CDU STATEMENT MIGHT CREATE, WHILE AVOIDING A US ROLE

IN A DOMESTIC GERMAN DEBATE. RUSH

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